

§ 784.21

products (see part 570, subpart G, of this chapter). Such enterprises or establishments will, however, be concerned with the exemption from overtime pay in section 13(b)(4) of the Act for employees employed in specified “on-shore” operations (see § 784.101), and the exemption from minimum wages and overtime pay provided by section 13(a)(5) for employees employed in fishing, fish-farming, and other specified “off-shore” operations on aquatic products. These exemptions, which are subject to the general rules stated in § 784.21, are discussed at length in subpart B of this part 784.

§ 784.21 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. “Breadth of coverage is vital to its mission” (*Powell v. U.S. Cartridge Co.*, 339 U.S. 497). An employer who claims an exemption under the Act has the burden of showing that it applies (*Walling v. General Industries Co.*, 330 U.S. 545; *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290; *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52). Conditions specified in the language of the Act are “explicit prerequisites to exemption” (*Arnold v. Kanowsky*, 361 U.S. 388). In their application, the purpose of the exemption as shown in its legislative history as well as its language should be given effect. However, “the details with which the exemptions in this Act have been made preclude their enlargement by implication” and “no matter how broad the exemption, it is meant to apply only to” the specified activities (*Addison v. Holly Hill*, 322 U.S. 607; *Maneja v. Waialua*, 349 U.S. 254). Exemptions provided in the Act “are to be narrowly construed against the employer seeking to assert them” and their application limited to those who come “plainly and unmistakably within their terms and spirit.” This construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed (*Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Kentucky Finance Co.*, supra; *Arnold*

29 CFR Ch. V (7–1–10 Edition)

v. Kanowsky, supra; *Calaf v. Gonzales*, 127 F. 2d 934; *Bowie v. Gonzales*, 117 F. 2d 11; *Mitchell v. Stinson*, 217 F. 2d 210; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52).

Subpart B—Exemptions Provisions Relating to Fishing and Aquatic Products

THE STATUTORY PROVISIONS

§ 784.100 The section 13(a)(5) exemption.

Section 13(a)(5) grants an exemption from both the minimum wage and the overtime requirements of the Act and applies to “any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning, or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee.”

§ 784.101 The section 13(b)(4) exemption.

Section 13(b)(4) grants an exemption only from the overtime requirements of the Act and applies to “any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof.”

LEGISLATIVE HISTORY OF EXEMPTIONS

§ 784.102 General legislative history.

(a) As originally enacted in 1938, the Fair Labor Standards Act provided an exemption from both the minimum wage requirements of section 6 and the overtime pay requirements of section 7 which was made applicable to “any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning